IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.681 OF 2004

Yellappa Annappa Shivsharan ...Appellant

vs.

Annapurna Kisan Shinde ...Respondent

Mr.Shrishail Sakhare for the Appellant

CORAM: A.S.OKA, J.
DATED: AUGUST 8, 2006.

P.C.:

1. Heard Advocate for the Appellant. The Appellant is the original Plaintiff. The Appellant filed a suit for declaration that one Renuka, is not his daughter. The suit was dismissed on merits as well as on the ground that the suit was barred by limitation.

2. The learned Counsel for the Appellant submitted that the cause of action for filing the suit arose for the first time when a Revision Application arising out of the proceeding under section 125 of the Code of Criminal Procedure, 1973 was decided by the Sessions Court granting liberty to the Appellant to file a suit for declaration challenging the paternity of the minor child. He submitted that under the provision of the the Limitation Act, 1963, there is a continuing cause of action for filing a suit for declaration.

3. He relied upon the decision of the learned Single Judge of Patna High Court reported in A.I.R.(38) 1951 Patna page 514 (Thakur Prasad Vs. Mt.Godavari Devi) and another decision of the learned Single Judge of Madras High Court

reported in A.I.R. 1962 Madras 141 (B.Mahadeva Rao Vs. Yesoda Bai). He submitted that there cannot be any presumption as regards paternity of the infant born out of a lawful wedlock. He submitted that the issue of paternity cannot be decided only on the basis of deposition of the mother and there has to be other evidence to corroborate the version of the mother.

4. So far as issue of limitation is concerned, the suit is filed for declaration that the Appellant is not the husband of the Respondent and the father of the minor child Renuka. The suit will be governed by the Article 58 of the said Act of 1963 which provides for a limitation of three years from the date on which right to sue first accrued.

5. In the present case, it can be stated that the Appellant came to know in the year 1992 that the Respondent was claiming that Renuka was born to her from the Appellant. The courts below have noted that the Appellant-Plaintiff admitted in the cross examination in the year 1992 that he came to know that his name was shown as the father of the child Renuka. Thereafter, in the year 1995, an application for maintenance was filed by the Respondent. The Courts below have held, and in my view rightly, that the cause of action arose in the year 1992 when the Appellant came to know that the Respondent is claiming that Renuka is the child born to her from the Appellant. The observation made by the Sessions Court in Revision application will not help the Appellant as purport of the observation made by the Sessions Court is that

the issue regarding paternity of the child can be decided in a Civil Suit and not in the application under section 125 of the said Code of 1973. Section 22 of the Limitation Act, 1963 will not apply to the present case. Both the courts have rightly held that the suit is barred by limitation.

5. Apart from the said finding of limitation, the courts below have appreciated the evidence on record so far as merits of the suit are concerned. The Appellate Court has noted that it has come in the evidence that the the Appellant was very affectionate to the daughter Renuka. It is also held that the Appellant had allowed the Respondent to keep Runuka in his house. It is an admitted fact that the Appellant has allowed the child Renuka to stay in his house. There is no reason to interfere with the finding of fact recorded by the courts below.

6. Apart from the evidence of the Respondent, the courts below have considered the other evidence on record for coming to the conclusion regarding paternity of Renuka. This is not a case where the Respondent’s case is accepted only on the basis of her testimony. No substantial question of law arises. Appeal is dismissed with no order as to costs.

Judge.